

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/822,079	Applicant(s) BERGER, ALLEN	
	Examiner Blair M. Johnson	Art Unit 3634	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on _____ is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Blair M. Johnson/
Primary Examiner, Art Unit 3634

Continuation of 10. Other (including any explanation in support of the above items): The declaration submitted 5/2/08 was subsequent to filing the notice of appeal. Consequently, it has not been entered. See 37 CFR 41.33(d)(1). An advisory action addressing this issue is being mailed separate from this communication. Regarding (2) and (3) above: Appellant states that the claims are as included in the amendment of 3/19/07. This is incorrect since Appellant filed an amendment after final on 5/2/08 which was entered by the Examiner on 5/14/08 (advisory action). Note that the claims are not to be reproduced in this section of the brief. Regarding (4), the discussion of the prior art, unexpected results, etc., is improper in this section. The claims are not properly explained as outlined above in section (4). Regarding (5), Appellant discusses the 112 rejection. This rejection has been overcome by the above mentioned after final amendment, entered on 5/14/08 and mention thereof should be removed. In addition to (6), above, no mention of the 112 rejection should be made in the Arguments section since no such rejection is made .